

IN THE CIRCUIT COURT FOR EIGHTEENTH JUDICIAL DISTRICT  
DuPAGE COUNTY, ILLINOIS  
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. JAMES E. RYAN, Attorney )  
General of the State Illinois, )  
and ex rel. JOSEPH E. BIRKETT, )  
State's Attorney for DuPage County, )

0000017

Plaintiff, )

v. )

No.

THE LOCKFORMER COMPANY, a )  
division of MET-COIL SYSTEMS )  
CORPORATION, a Delaware Corporation; )  
and HONEYWELL INTERNATIONAL, INC., )  
a Delaware Corporation, )

EPA Region 5 Records Ctr.



235062

Defendants. )

VERIFIED COMPLAINT FOR INJUNCTION AND CIVIL PENALTIES

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, complains of the Defendants, THE LOCKFORMER COMPANY, a division of MET-COIL SYSTEMS CORPORATION, a Delaware corporation; and HONEYWELL INTERNATIONAL, INC., a Delaware corporation, as follows:

COUNT I

SUBSTANTIAL DANGER TO THE ENVIRONMENT,  
PUBLIC HEALTH, AND WELFARE

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") and ex rel. JOSEPH E. BIRKETT, State's Attorney for DuPage County, pursuant to Section 43(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/43(a) (2000).

2. Count I is brought to restrain an ongoing substantial danger

to human health and the environment.

3. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act.

4. Defendant THE LOCKFORMER COMPANY ("Lockformer") existed as an Illinois corporation from approximately December 6, 1946, until a date better known to Lockformer, when it was merged with Defendant MET-COIL SYSTEMS CORPORATION ("Met-Coil"). On information and belief, Lockformer is now a division of Met-Coil.

5. At all times relevant to the Complaint, Lockformer is and was the owner and operator of a facility located at 711 Ogden Avenue, City of Lisle, County of DuPage, Illinois ("Facility"). The Lockformer Facility consists of a one-story metal fabricating plant and associated office space. Lockformer is engaged in the business of manufacturing parts and equipment for the metal fabricating industry.

6. On information and belief, Defendant Met-Coil is a Delaware corporation. Met-Coil itself owns and operates property adjacent to and immediately west of the Lockformer Facility.

7. On information and belief, AlliedSignal, Inc. ("AlliedSignal"), existed as a Delaware corporation authorized to transact business in Illinois until approximately 1999, or on a date better known to AlliedSignal, when it was merged with Honeywell, Inc., and became Defendant HONEYWELL INTERNATIONAL, INC. ("Honeywell"). On information and belief, AlliedSignal is no longer a company, but is now part of Defendant Honeywell. On information and belief, Defendant Honeywell is a Delaware corporation authorized to transaction business in Illinois.

8. Lockformer's metal fabrication processes involve the use of a pitted trichlorethylene ("TCE") vapor degreaser located within the Facility and several feet below ground surface. From approximately 1970 to 1992, or on dates better known to Defendants, this degreaser drew its TCE from a 500-gallon storage tank located on the roof of the Facility.

9. On information and belief, from approximately 1970 to 1992, or on dates better known to Defendants, AlliedSignal was the exclusive supplier of TCE to Lockformer for use in Lockformer's pitted TCE vapor degreaser. Upon delivery, AlliedSignal refilled the TCE storage tank at regular intervals via a refilling line which extends down the West side of the Facility to approximately 5 feet above ground level.

10. On information and belief, from approximately 1970 until 1992, or on dates better known to Defendants, AlliedSignal spilled TCE on the ground beneath the refilling line when refilling the TCE storage tank.

11. Soil samples collected in 1992 at the Facility in the vicinity of the refilling line showed the presence of TCE at a maximum concentration of 680,000 parts per billion ("ppb").

12. On December 5, 1994, Lockformer submitted to the Illinois EPA a Review and Evaluation Services Agreement pursuant to the Illinois EPA's then-current voluntary environmental investigation and remediation program.

13. On information and belief, additional soil and groundwater samples collected in 1995, by Lockformer's then consultant, in the vicinity of the refilling line, showed the presence of TCE at maximum concentrations of 6,500 ppb and 24 ppb, respectively.

14. On August 26, 1998, Lockformer submitted to the Illinois EPA

a Site Remediation Program Form for participation in the Site Remediation Program pursuant to the Illinois Pollution Control Board ("Board") Waste Disposal Regulations at Parts 740 and 742 of 35 Ill. Adm. Code.

15. Since discovering the TCE spill and resulting contamination in 1992, or on a date better known to Defendants, Defendant Lockformer failed to define the nature and extent of the off-site TCE contamination, and failed to perform any corrective action either on-site or off-site.

16. Surrounding the Lockformer and Met-Coil properties are residential areas with schools and homes, many of which draw groundwater from wells for drinking, bathing, and other potable uses.

17. On December 18, 19, and 20, 2000, the Illinois EPA collected potable water samples from forty-eight (48) homes located near Front Street, approximately 1,200 feet South of Lockformer's Facility. Of the 48 potable water samples collected, thirty-four (34) samples showed the presence of TCE, and nine (9) showed the presence of TCE in excess of 5 ppb, the groundwater standard.

18. The groundwater standard for TCE, as identified in Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, was exceeded in the groundwater underlying the Facility and in 9 homes using groundwater for potable uses located approximately 1,200 feet South of the Facility.

19. On information and belief, other than the Lockformer Facility, no other sources of TCE exist in the vicinity which could have caused the TCE contamination of the groundwater.

20. On information and belief, the TCE spilled at Lockformer's Facility by AlliedSignal, now known as Defendant Honeywell, from

approximately 1970 to 1992, or on dates better known to Defendants, migrated to the nearby residential potable water supply wells located approximately 1,200 feet South of the Facility, thereby contaminating these wells.

21. TCE is a known human carcinogen and mutagen. TCE exposure at various concentrations also causes eye irritation, nausea, dizziness, headache, tremors, confusion, skin inflammation, reduced reasoning ability, impaired short term memory, and possible death from respiratory or cardiac failure.

22. Section 43(a) of the Act, 415 ILCS 5/43(a) (2000), provides, in relevant part, as follows:

- a. In circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, . . . the Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an *ex parte* order and shall schedule a hearing on the matter not later than 3 working days from the date of the injunction.

23. Defendants by their actions as alleged herein, have created circumstances of substantial danger to the environment and the public health and welfare, by causing, threatening or allowing the TCE contamination of potable water in the vicinity of the Facility in direct contravention of the requirements of the Act.

24. The substantial danger alleged herein shall continue until such time as the Defendants demonstrate that they have taken the proper measures to provide a safe, alternative potable water supply to affected and potentially affected residents and, after fully defining the nature and extent of TCE contamination and remediate said

contamination.

25. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the relevant environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of immediate and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff prays that this Court grants an immediate injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, THE LOCKFORMER COMPANY; MET-COIL SYSTEMS CORPORATION; and HONEYWELL INTERNATIONAL, INC., and enter an order with respect to Count I:

1. Finding that Defendants created and maintained a substantial danger to the environment and public health and welfare;

2. Ordering Defendants to immediately provide a safe, alternative potable water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to take all necessary corrective action; to provide a permanent alternative source for potable drinking water;

3. Enjoining Defendants from any further violation of Section 43(a) of the Act;

4. Ordering Defendants to take all necessary steps to ensure that future violations of Section 43(a) of the Act will not occur;

5. Assessing against Defendants, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2000), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued;

6. Ordering Defendants, pursuant to 415 ILCS 5/42(f) (2000), to

pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting other such relief as this Court deems appropriate and just.

## COUNT II

### WATER POLLUTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, and ex rel. JOSEPH E. BIRKETT, State's Attorney for DuPage County, on his own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2000).

2-19. Plaintiff realleges and incorporates by reference paragraphs 4 through 21 of Count I, as paragraphs 2 through 19 of this Count II.

20. Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

21. Section 3.06 of the Act, 415 ILCS 5/3.06 (2000), provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

22. TCE is a "contaminant" as that term is defined in Section 3.06 of the Act.

23. Section 3.26 of the Act, 415 ILCS 5/3.26 (2000), provides,

in relevant part, the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, . . . or any other legal entity, or their legal representative, agent or assigns.

24. The Defendants are "persons" as that term is defined in Section 3.26 of the Act.

25. Section 3.55 of the Act, 415 ILCS 5/3.55 (2000), provides the following definition:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

26. Section 3.56 of the Act, 415 ILCS 5/3.56 (2000), provides the following definition:

"WATERS" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

27. The groundwater underlying the Facility is a "water" as that term is defined in Section 3.56 of the Act.

28. Pursuant to authority granted in Section 8(a) of the Illinois Groundwater Protection Act, 415 ILCS 55/8(a) (2000), the Board promulgated rules and regulations to establish comprehensive water quality standards, located at Subtitle F, Chapter I of 35 Ill Adm. Code ("Board Water Quality Regulations"), which are specifically aimed at the protection of groundwater.

29. The groundwater underlying and surrounding the Facility is classified as Class I groundwater as defined in Section 620.210 of the



Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.210.

30. Section 620.405 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405, provides as follows:

General Prohibitions Against Violations of Groundwater Quality Standards -

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

31. Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, provides, in relevant part, as follows:

Groundwater Quality Standards for Class I: Potable Resource Groundwater

\* \* \*

(b) Organic Chemical Constituents -

Except due to natural causes or as provided in Section 620.450 or subsection (c), concentrations of the following organic chemical constituents shall not be exceeded in Class I groundwater:

<u>Constituent</u>	<u>Standard (ppb)</u>
Trichloroethylene*	5

\*\_ Denotes a carcinogen.

32. The groundwater standard for TCE, as identified in Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, was exceeded in the groundwater underlying the Facility and in 9 homes using groundwater for potable uses located approximately 1,200 feet South of the Facility.

33. On information and belief, other than the Lockformer Facility, no other sources of TCE exist in the vicinity which could have caused the TCE contamination of the groundwater.

34. On information and belief, the TCE spilled at Lockformer's Facility by AlliedSignal, now known as Defendant Honeywell, from approximately 1970 to 1992, or on dates better known to Defendants,

migrated to the nearby residential potable water supply wells located approximately 1,200 feet South of the Facility, thereby contaminating these wells.

35. By contaminating groundwater with TCE, a contaminant, Defendants caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), and Sections 620.405 and 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405 and 620.410.

WHEREFORE, Plaintiff prays that this Court grants a preliminary injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, THE LOCKFORMER COMPANY; MET-COIL SYSTEMS CORPORATION; and HONEYWELL INTERNATIONAL, INC., and enter an order with respect to Count II:

1. Finding that Defendants violated Section 12(a) of the Act and 35 Ill. Adm. Code 620.405;

2. Enjoining the Defendants from any further violation of Section 12(a) of the Act and 35 Ill. Adm. Code 620.405;

3. Ordering Defendants to immediately provide a safe, alternative potable water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to take all necessary corrective action; to provide a permanent alternative source for potable drinking water;

4. Assessing against Defendants, pursuant to 415 ILCS 5/42(a) (2000), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued thereafter;

5. Ordering Defendants, pursuant to 415 ILCS 5/42(f) (2000), to

pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting other such relief as this Court deems appropriate and just.

### COUNT III

#### WATER POLLUTION HAZARD

1-14. Plaintiff realleges and incorporates by reference paragraphs 7 through 21 of Count I, as paragraphs 1 through 14 of this Count III.

15. Section 12(d) of the Act, 415 ILCS 5/12(d) (2000), provides as follows:

No person shall:

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

16-22. Plaintiff realleges and incorporates by reference paragraphs 21 through 27 of Count II, as paragraphs 16 through 22 of this Count III.

23. On information and belief, from approximately 1970 to 1992, or on dates better known to Defendants, AlliedSignal, now known as Defendant Honeywell, spilled TCE, a contaminant, on the ground at the Facility.

24. The TCE, a contaminant, spilled at the Facility by Honeywell remains in the soil overlying the groundwater at the Facility.

25. By spilling a contaminant on the ground at the Facility that remains in the soil overlying the groundwater at the Facility, Defendant Honeywell deposited contaminants upon the land in such place and manner so as to create a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2000).

WHEREFORE, Plaintiff prays that this Court grants a preliminary injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendant HONEYWELL INTERNATIONAL, INC., and enter an order with respect to Count III:

1. Finding that Defendant Honeywell violated Section 12(d) of the Act;

2. Enjoining the Defendant from any further violation of Section 12(d) of the Act;

3. Ordering Defendant Honeywell to immediately provide a safe, alternative potable water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to take all necessary corrective action; to provide a permanent alternative source for potable drinking water;

4. Assessing against Defendant Honeywell, pursuant to 415 ILCS 5/42(a) (2000), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued thereafter;

5. Ordering Defendant Honeywell, pursuant to 415 ILCS 5/42(f) (2000), to pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting other such relief as this Court deems appropriate and just.

#### COUNT IV

#### CREATION AND MAINTENANCE OF A COMMON LAW PUBLIC NUISANCE

1. This Count is brought on behalf of the PEOPLE OF THE STATE

OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, and ex rel. JOSEPH E. BIRKETT, State's Attorney for DuPage County, on his own motion. The Attorney General is the chief legal officer of the State of Illinois, and with the State's attorney has the powers and duties prescribed by law pursuant to Section 15, Article 5 of the Illinois Constitution of 1970. Thus, this Count is brought pursuant to the powers of the Attorney General and the State's Attorney to institute an action at common law on behalf of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, to abate a public nuisance and to protect the health, safety and welfare of the PEOPLE OF THE STATE OF ILLINOIS.

2-19. Plaintiff realleges and incorporates by reference herein paragraph 4 through 21 of Count I as paragraphs 2 through 19 of this Count IV.

20. The TCE spilled on the ground at the Facility continues to threaten to impact groundwater underlying the Facility, and subsequently, continues to threaten groundwater used for drinking, bathing, and other potable uses in the vicinity of the Facility.

21. TCE is a known human carcinogenic and mutagenic contaminant that, when released to the environment, injuriously affects the safety and health of the public, and works substantial annoyance, inconvenience, and injury to the public.

22. As a result of the foregoing, Defendant's Facility constitutes a public nuisance at common law.

WHEREFORE, Plaintiff prays that this Court grants a preliminary injunction, and after a trial a permanent injunction, in favor of Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and against Defendants, THE LOCKFORMER COMPANY; MET-COIL SYSTEMS CORPORATION; and HONEYWELL INTERNATIONAL, INC., and enter an order with respect to Count IV:

1. Finding that the Facility as described herein constitutes a

public nuisance;

2. Enjoining Defendants from the maintenance of a common law public nuisance;

3. Ordering Defendants to immediately provide a safe, alternative drinking water supply to affected and potentially affected residents; to fully define the nature and extent of the contamination; and to take all necessary corrective action; to provide a permanent alternative source for potable drinking water;

4. Ordering Defendants to pay all costs, including sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

5. Granting other such relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. JAMES E. RYAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

By:

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ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. JOSEPH E. BIRKETT  
State's Attorney  
DuPage County, Illinois

BY:

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